

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

DOUG NEUBERGER
Section 19, Mount Vernon Township
Cerro Gordo County

ADMINISTRATIVE CONSENT ORDER
NO. 2007-AFO- 22

TO: Doug Neuberger
9709 Grouse Ave.
Clear Lake, Iowa 50428

I. SUMMARY

This administrative consent order is entered into between Doug Neuberger and the Iowa Department of Natural Resources (DNR) for the purpose of resolving an issue pertaining to improper manure release into a tile intake. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Eric Wiklund, Field Office #2
Iowa Department of Natural Resources
2300 15th St. S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to appeal rights:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto.

III. STATEMENT OF FACTS

1. Doug Neuberger owns and operates an animal feeding operation located in Section 19, Mount Vernon Township, Cerro Gordo County, Iowa. The operation consists of a swine confinement with 400 finishers, 200 nurseries, 200 growers, and 50 sows. The

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOUG NEUBERGER

operation has less than 500 animal units and is considered a small animal feeding operation pursuant to Iowa Code section 459.102(44) and 567 Iowa Administrative Code (IAC) 65.1.

2. On March 14, 2007, Eric Wiklund, environmental specialist for DNR Field Office 2, investigated a complaint of manure being land applied by Mr. Neuberger to a field that was under water from snow melt. During this inspection, Mr. Neuberger admitted that he did apply through standing water. Mr. Neuberger stated that there was no tile intake in the area.

3. On March 21, 2007, Mr. Wiklund drove by the Neuberger site and observed a tile intake in a road ditch where manure was ponded. Samples from the intake demonstrate that manure entered into the tile intake. The ammonia sample from the intake was 18 mg/L.

4. On March 27, 2007, DNR Field Office 2 issued a Notice of Violation letter to Mr. Neuberger. The letter cited Mr. Neuberger for improperly applying manure and allowing the manure to reach a tile intake. The letter informed Mr. Neuberger the matter was being referred for an enforcement action.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. A permit has not been issued for this facility and DNR Field Office 2 found evidence of a discharge of untreated pollutants into a water of the state. The above-facts indicate a violation of this provision.

2. 567 IAC 65.2(3) provides that the minimum level of waste control for a confinement feeding operation shall be the retention of all wastes between periods of application. In no case shall manure from a confinement feeding operation discharge to a water of the state or title line that discharges to a water of the state. On March 14, 2007, Mr. Neuberger admitted that he applied manure through standing water and Mr. Wiklund found evidence of a manure discharge to the tile intake. The above-facts disclose a violation of this provision.

3. 567 IAC 65.2(7) provides all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. On March 14, 2007, Mr. Neuberger admitted that he had land-applied manure through standing water and Mr. Wiklund found evidence of a manure discharge to the tile intake. The ammonia sample collected from the tile intake was 18 mg/L., which indicates a significant amount of manure reached the tile intake. The above-mentioned facts disclose a violation of this provision.

4. 567 IAC 65.2(9) provides that a person storing, handling, transporting, or land-applying manure from an animal feeding operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but not later than six

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOUG NEUBERGER

hours after the onset of discovery of the release. "Release" as defined by 567 IAC 65.1 means an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure. DNR Field Office 2 discovered manure released from Neuberger's facility. Mr. Neuberger failed to report the release to the DNR. The above-facts disclose a violation of this provision.

5. 567 IAC 65.5 provides that the Department may evaluate any animal feeding operation to determine if manure from the operation: is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control; is causing or may reasonably be expected to cause pollution of a water of the state; is causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist, the operation is required, upon notification from the DNR, to apply for an operation permit (subject to animal capacity limitations) and institute necessary remedial actions to eliminate the conditions. Based on the foregoing facts and conclusions, the DNR further concludes that one or more of the above-described conditions existed at this facility and Mr. Neuberger is hereby notified that he must comply with the remedial measures specified in V(1 & 2), below.

V. ORDER

THEREFORE, DNR orders and Mr. Neuberger agrees to do the following:

1. Within 30 days of the date the Director signs this administrative consent order, Mr. Neuberger shall submit and maintain a Manure Management Plan (MMP) for as long as he raises animals at his facility; and
2. Within 30 days of the date the Director signs this administrative consent order, Mr. Neuberger shall obtain certification as a confinement site manure applicator for as long as he raises animals at the facility.

VI. PENALTY

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. However, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with no administrative penalty.

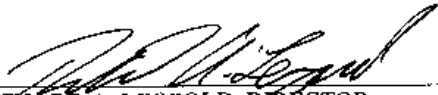
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DOUG NEUBERGER

VII. WAIVER OF APPEALS RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Doug Neuberger. For that reason, Mr. Neuberger waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, may result in the imposition of administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 2 day of
July, 2007.



DOUG NEUBERGER

Dated this 24 day of
June, 2007.

No File Number; Kelli Book; DNR Field Office 2; Ken Hessenius; EPA; VIII.D.1.a